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CURRENT TOPICS

The Cost of Law

IN the interval of waiting for the legislative proposals to implement the Rushcliffe Committee's Report, sporadic articles are appearing and speeches being made complaining of the cost of litigation to the ordinary suitor. Criticism which is constructive is welcome and no one will complain for example, that an article like that in the *Evening Standard* of 20th June, 1946, is unfair to the legal profession or ill-informed. Perhaps it is a little misleading to say that "as a whole the fees of the legal profession compare favourably with those charged by any other," but as this statement was coupled with the observation that only a very small minority of lawyers make fortunes it would seem that the writer meant to convey that lawyers' fees are as moderate as those of any other body of professional men. Many of us will consider them more moderate than most, bearing in mind that the cost of living has increased far beyond the modest increases in the scales during the last fifty years or so, and that solicitors' incomes are on the average quite low. The writer in the *Evening Standard* blames the two-thirds rule, the exorbitant fees demanded by expert witnesses, and "the obscurities and tortuosities which make for difficulty, delay—and so inevitably expense." With regard to the first two matters there will be much agreement: there is a strong case for a "maximum price" control of certain fees. The third matter seems to refer to the intricacies of interlocutory proceedings and pleadings. These may well be simplified without loss to the course of justice. It would not be right, however, to say that they are the substantial causes of the cost. The English system of justice, it has often been said, is the best in the world, and this is mainly due to the thorough but necessarily lengthy cross-examinations and investigations of case-law, cheapening which would lessen these advantages, and would result in national loss. The root of the matter, we submit, is to be found in the article in the *Standard*, in a passage which we crave leave to quote in full: "Apart from judges' salaries and pensions, which are charged on the consolidated fund, litigants themselves bear the running expenses of the courts by paying various court fees. In an average year these amount, in the High Court and the county courts together, to about one and three-quarter million pounds. Justice is an essential community service of which any citizen is liable to find himself in need. There is a good case for making the whole cost of its administration a public charge."

Women Lawyers

THE *Sunday Graphic* published an extract, on 21st July, 1946, from Mr. Justice HUMPHREYS' forthcoming book "Summing up." Among the candid opinions the author of the book expresses, he has something to say about women barristers and solicitors which should interest the profession. Though at first inclined to view with alarm the new step of admission of women to the Bar, he is now satisfied that his fears were groundless. He writes: "Solicitors as a rule are a shrewd lot of men and, in briefing a barrister, want value for their money, or rather their client's money, and the women barristers who appear before me seem, almost without exception, to do their work quietly and efficiently, perhaps, in some cases, almost too quietly. A weak voice is a distinct drawback to a male advocate; in a female it is apt to be fatal to her chances of success at the criminal bar." Asking why criminal practice is so popular among women, Mr. Justice Humphreys observes that the common law work in the High Court and county courts, as well as Chancery work and conveyancing and attending summonses before the Master and the Judge in Chambers, offers a future for women. "They appear to be doing a substantial proportion of the undefended divorce cases on circuit," he writes, and adds that in some cases, nullity for example, a woman would prefer to discuss with a woman rather than with a man the unpleasant details of her married life. He writes: "In that class of case I fancy that a substantial number of women are already employed by solicitors as managing clerks, and it may be that it is as solicitors rather than barristers that the future of women who have adopted the law as a means of livelihood will be found to lie." Time alone will tell, but although it can positively be stated that in common law, Chancery, divorce and criminal work at the Bar a few women are succeeding, more are succeeding as solicitors. On the other hand this may be accounted for by the great preponderance in the numbers of solicitors over barristers. For the present suffice it to say that the successful women in both professions have demonstrated an efficiency combined with fairness, firmness and tact which have put many male practitioners in the shade.

Recourse to the Courts and Industrial Injuries

CLAUSE 37 of the National Insurance (Industrial Injuries) Bill provides for the reference of certain questions of law, "if the Minister thinks fit," to the High Court as well as for appeals to the High Court against the Minister's refusal to refer such questions of law. This clause was discussed in the Lords on 23rd July on a motion by the MARQUESS OF READING to add a provision authorising the court to grant the claimant his costs even where he fails in his appeal. The LORD CHANCELLOR expressed the view that there was no limit to what the judge already had the right to do with regard to costs so long as he exercised his discretion judicially, but as there seemed to be diversity of opinion about it, he had no objection to inserting words which had the same effect. VISCOUNT SIMON said that as he understood the law, generally speaking a judge had no right at all, while deciding in favour of A, to say that A should pay all the costs, the

best-known case on the subject being *Higgs* v. *Higgs* (1916), 1 K.B. 640. VISCOUNT MAUGHAM agreed and added that it had never been held in our courts that a defeated defendant should be paid his costs unless there were special reasons for it. An amendment was also passed to cl. 42 so as to effect that the Industrial Injuries Commissioner and his deputy commissioners should be barristers or advocates of not less than ten years' standing. The Marquess of Reading also moved an amendment to cl. 47, which should enable the Commissioner, if he thinks fit, to refer questions of law to the Court of Appeal and persons aggrieved by his refusal to appeal to the Court of Appeal. Without such a clause, he said, the Commissioner would be "to all intents and purposes not a judge but a civil servant." Viscount Simon said that on the balance the new plan for providing against industrial injuries was better than the old, and we ought to feel grateful to the Government for undertaking this, but he strongly supported the Marquess of Reading's amendment in a closely reasoned speech, and cited parallels in the Pensions Appeal Tribunals Act, 1943, and the Unemployment Insurance Act. "I believe," his lordship said, "that it is part of the essential rights of the British people that when a really serious question affecting their own individual rights arises, and depends not on facts but on law, it should be decided under conditions which do not exclude courts. Viscount Maugham supported this view, but the Lord Chancellor in his reply said that the amendment would facilitate a double appeal to the Court of Appeal and the House of Lords, and in cases of difficulty decisions could be given by three commissioners. His lordship said that both this Government and the last Government felt very strongly on the matter. On question, the amendment was negatived.

Nuremberg

THE ATTORNEY-GENERAL has again distinguished his country and himself in a survey of the law and facts at the trials at Nuremberg. On 26th July Sir HARTLEY SHAWCROSS made his closing speech for the prosecution in the case against the individual defendants. It is high praise to say that for eloquence, memorable summing-up in a phrase, and profound grasp of the essential principles of the law governing the life of nations, Sir Hartley's speech approached near to the standard set by his opening speech. "In all our countries," he said, "when, perhaps in the heat of passion or for other motives which impair restraint, some individual is killed, the murder becomes a sensation, our compassion is aroused, nor do we rest until the criminal is punished and the rule of law is vindicated. Shall we do less when not one, but on the lowest computation 12,000,000 men, women and children are done to death? Not in battle, not in passion, but in the cold, calculated, deliberate attempt to destroy nations and races, to disintegrate the traditions, the institutions and the very existence of free and ancient states . . . These men were, with Hitler, Himmler, Goebbels and a few other confederates, at once the leaders and the drivers of the German people. If these men are not responsible, who are? . . . Let it be said plainly now that these defendants are charged also as common murderers." On the legal aspect of the matter, Sir Hartley said: "Neither the Pact of Paris nor any other treaty was intended to—or could—take away the right of self-defence . . . But that does not mean that the State thus acting is the ultimate judge of the propriety and of the legality of its conduct. It acts at its peril . . . There is no substance at all in the view that international law rules out the criminal responsibility of States and that since, because of their sovereignty, States cannot be coerced, all their acts are legal. . . . International law has in the past sought to claim that there is a limit to the omnipotence of the State, and that the individual human being, the ultimate unit of all law, is not disentitled to the protection of mankind when the State tramples upon his rights in a manner which outrages the conscience of mankind." The final justification for the trials, if history should ever demand it, is to be found in the eloquent words of Mr. Justice JACKSON, at the end of his closing speech for the prosecution: "If you were to say of these men that they are not guilty, it would be as true to say that there has been no war, there are no slain, there has been no crime."

The Effect of the Trials

As the trials at Nuremberg draw to their close and the outraged consciences of civilised men approach some measure of appeasement, it is useful to survey the legal ground which has been covered since the tribunal was constituted. We may thus be helped to form a judgment on whether the trials are a step towards the formation of a legal and ordered world society. Professor H. A. SMITH, who is Professor of International Law in the University of London, has some practical experience of the trials, and he attempts to sum up their legal consequences in an article in *Free Europe* for July, 1946. The real issue presented by the Nuremberg trials is put by Professor Smith in the form of a question: "Do we accept the principle of the independent authority of international law, or do we think that the victors in a war have the right to re-fashion the law in order to be able to work their will upon the persons of their defeated enemies?" After quoting from the French code a formal statement of the universal legal principle that no one can be punished for an act which was not an offence at the time of its commission, Professor Smith writes that in 1939 no lawyer would have dared to say that the rulers of a State could be punished as individual criminals for preparing an aggressive war. In future, he continues, it will be for the victors and for them alone to decide whether the vanquished State was justified in declaring war. "Law ceases to be law if its violation can be justified by success." These are serious objections to which an answer must be found. It will be found, it is submitted, in the results of the trials. Their legal basis cannot yet be strong, for, though not without precedent, they are a relatively new phenomenon in international law. But if they act at the least as a moderate future deterrent, their purpose will have been served. As to Professor Smith's arguments in favour of "the defence of superior orders," it may well be doubted whether in matters of this sort, where the blame is so easily passed from one to another, legislators and judges ought to pay any attention to that defence.

Recent Decision

In *Attorney-General* v. *Northwood Electric Light and Power Company Ltd.*, on 22nd July (*The Times*, 24th July), MACNAGHTEN, J., held that the making of an entry of £2 7s. 11d. on a prepayment meter card by a collector for the company was not a "receipt given for or upon the payment of money amounting to £2 or upwards" within s. 103 of the Stamp Act, 1893, and therefore the card was not subject to 2d. stamp duty because the card remained the property of the company and therefore the company had not "given" a receipt.

INTERIM RECOMMENDATIONS OF THE DENNING COMMITTEE

The Committee on Procedure in Matrimonial Causes presided over by Mr. Justice Denning have presented a First Interim Report to the Lord Chancellor recommending a reduction to six weeks of the present period of six months which must elapse before a decree *nisi* of divorce or nullity of marriage can be made absolute.

The Lord Chancellor, in consultation with the Lord Chief Justice and the President of the Probate, Divorce and Admiralty Division, has decided to accept the recommendations of the Denning Committee, and accordingly a General Order of the High Court has been made under s. 183 of the Supreme Court of Judicature (Consolidation) Act, 1925, reducing the period to six weeks. The Order comes into operation on the 6th August.

The Denning Committee further recommend a simplification of the procedure for applying for a decree absolute and the abolition of the present requirement of personal search by solicitors in the files of the Divorce Registry. This recommendation has also been accepted, and new Rules of Court have been made (to come into operation on the 6th August) to give effect to the modified procedure recommended.

Copies of the report can be obtained at H.M. Stationery Office.

THE EFFECT OF THE LAW REFORM (CONTRIBUTORY NEGLIGENCE) ACT, 1945

FROM one point of view, it seems true to say that the Law Reform (Contributory Negligence) Act, 1945, has not altered the rules of law relating to contributory negligence at all. Its effect has been to modify the operation of those rules by declaring that, where the situation of contributory negligence arises, the result will not be to defeat a plaintiff's claim absolutely, but to give such plaintiff a modified right to recover damages. This is in itself, of course, a fundamental change in the overall situation, but it cannot be stressed too much that the change is one of operative effect rather than of substance. The rules themselves stand unimpaired.

Thus, in order to bring the Act of 1945 into operation, it is still necessary for the defendant to establish that the plaintiff has, in fact, been guilty of contributory negligence, in accordance with all the common law rules relating to the defence of contributory negligence in existence before the passing of the Act. When the defendant satisfactorily discharges himself of this burden of proof, the result will not be as hitherto, that the plaintiff's claim is defeated, but merely that the defendant pays a sum by way of damages which, in all probability, will be less than the sum he would have had to pay had he failed to discharge the burden of proof of contributory negligence laid upon him.

In particular in this connection, it should be noted that the rule in *Davies* v. *Mann* (1842), 10 M. & W. 546, or the "last opportunity rule," has not been affected by the passing of the Act. Although there is no decision upon the new Act, when a similar query arose in the case of the Maritime Conventions Act, 1911, it was finally settled that the rule in question was still subsisting (*Anglo-Newfoundland Development Co.* v. *Pacific Steam Navigation Co.* [1924] A.C. 406). It seems unquestionable that the like decision would be reached under the new Act.

A point that may possibly call for a decision in the future is whether, in enacting that the loss shall be shared between the parties, the Act gives the court an unfettered discretion to award the damages which it considers just and equitable in the circumstances of the case, or whether the discretion has been limited in any way. In other words, is the wording of s. 1 (1) to be regarded as imperative that the damages "shall be reduced," so as to exclude the possibility of the court's awarding the whole of his loss to one party? The wording of s. 1 (2), which provides that in these cases "the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault," tends, it is submitted, to support the conclusion that the court is bound to make some reduction, however nominal, in the amount of damages. It is still open for argument whether or not the court might find and record, under s. 1 (2), the same total amount of damages as it has already awarded to the successful litigant under s. 1 (1). In the absence of authority, one can only express a preference for the view that damages awarded must be reduced by at least one farthing.

The intentions of the Legislature in passing the Act would appear to be beyond dispute, and the main points that arise upon the Act have been stated above. It may well be, however, that some unlooked for consequences will flow from the Act and that even more far-reaching changes in the law have been introduced through its proverbial back door.

In the first place, there can be no doubt that the Legislature has not carried into effect the original recommendation of the Law Revision Committee. This Committee in 1939 advised that the Admiralty rule relating to collisions at sea, as laid down by the Maritime Conventions Act, should be extended to common law cases. The 1911 Act, however, provided that "the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault." In other words, the liability is to be in proportion to the respective degrees of negligence of the parties. The 1945 Act, on the other hand, is framed in the language of the Law Reform (Married Women and Joint Tortfeasors) Act, 1935, as has been pointed out by the learned editor of Salmond on Torts. *Smith* v. *Bray* (1939), 56 T.L.R. 200, a decision on the latter Act, lays down the principle that liability depends on the extent to which a party's negligence contributed as a cause of the accident, and not upon a computation of his fault. It is to be observed that s. 1 (1) of the Act of 1945 directs the court to have regard to the claimant's "share in the responsibility" for the damage and does not allude to his fault. It would thus appear that the Admiralty rule has not been applied to the common law in all its details, only the broad general principle of the division of loss being imported. This conclusion is supported by the provisions of s. 3 (1), to the effect that the Maritime Conventions Act is to have effect as if the 1945 Act had not been passed. This subsection would be redundant if the principles underlying the two Acts were identical. As a purely practical problem, of course, it would be extremely difficult to distinguish between the proportion of a party's negligence and the proportion by which that negligence contributed to the accident. In the ordinary case the question, no doubt, would not arise, but *Smith* v. *Bray* shows that the point is not too abstruse to call for consideration in the exceptional case. Furthermore, the point is of some academic interest, as it affords a clear illustration of the divergent theories as to the true basis of tortious liability. The Admiralty rule is in accordance with the so-called fault theory of tortious liability, the question of damages being related to the party's negligence. The wording of the 1945 Act is more consistent with the causation theory. If the defendant's act substantially caused the accident he is to be responsible for the bulk of the damages. This difference in emphasis between the two Acts would seem to confirm the view expressed in "Salmond," that "the modern tendency is to treat causation as the fundamental conception underlying the doctrine of contributory negligence."

Another point which may well cause considerable confusion is the fact that in s. 1 (1) the word "fault" is used in two distinct senses. Section 4 defines fault as "negligence . . . or other act or omission which . . . would, apart from this Act, give rise to the defence of contributory negligence." While in general the same rules apply in deciding what is contributory negligence as are relevant for determining whether negligence itself exists, decided cases leave no doubt that contributory negligence may be present where the plaintiff owes no duty to the defendant. One can refer to the judgment of Atkin, L.J., in *Ellerman Lines* v. *Grayson* [1919] 2 K.B. 514, at p. 537, as authority for the view that contributory negligence is a wider and looser conception than that of negligence proper. It is clear that the Act means to say that where any person suffers damage as the result partly of his own contributory negligence and partly of the negligence of any other person or persons, the provisions of s. 1 (1) are to apply. There is nothing in the Act itself, however, to refer the plaintiff's fault to the meaning of contributory negligence and that of the defendant to negligence proper. If the meanings of fault are interchangeable in s. 1 (1), it may well be that the Act has inadvertently created an action for contributory negligence. In this connection reference should be made to s. 1 (5), which seems to contemplate a person avoiding liability for his own fault by pleading the Limitation Act, 1939, and thereafter claiming compensation for his own loss by alleging the fault of the other party. Special provision is made to avoid this where the Limitation Act has been pleaded, but the position is not so clear where this is not the case. It may be that a person who has been very negligent himself could institute proceedings against a party whose fault was of a minor contributory character not involving a breach of duty towards the other. Bearing in mind the court's wide discretion as to damages, such an action would, no doubt, not be very profitable, but it may now, in theory, be a possibility.

The definition of "fault" in the interpretation clause is very wide, to the point of establishing the doctrine of contributory "negligence" as a general plea in all torts. This would appear to be the result of coupling breach of statutory duty and acts or omissions which give rise to a liability in tort with negligence in the usually accepted sense of that term. If the implications of this definition are worked out to their logical conclusion, results that are as unexpected as they are far-reaching must follow.

The most startling innovations in the law are the consequence of applying the phrase "act or omission which gives rise to a liability in tort" to the fault of both plaintiff and defendant. It amounts to this, that if a party can show that any tort committed by the other has in fact contributed to the damage with which he himself is charged, he will be able to reduce his liability proportionately. Thus, trespasses, acts of conversion or even nuisances, may become the object of a plea of contributory "negligence." According to the terms of the Act, in an action for inducing a breach of contract, it would be competent to the defendant, whilst admitting that he had in fact offered an inducement to the plaintiff's servant, to show that the plaintiff had published a libel upon the servant and that the servant had left the plaintiff's employment partly as a result of the defendant's inducement and partly because of the libel. Both libel and inducement are contributory causes of the damage. By pleading the 1945 Act the defendant, in these circumstances, should be entitled to have his damages reduced.

Furthermore, the whole of the law relating to *ius tertii* may need careful review. An example of the sort of circumstances where these considerations might arise is as follows. The fence dividing Blackacre and Whiteacre belongs to Blackacre. The plaintiff, who is in occupation of Blackacre, but is a mere squatter as against X, pulls down part of the dividing fence to use as firewood. The result is that the defendant's cattle stray on to the plaintiff's land and cause damage. It may now be open to the defendant, by virtue of the wide interpretation of the word "fault" in the Act, to prove the plaintiff's lack of title. It would follow that the act of pulling down the fence is a tort as against the true owner of the property, X, and, as this act manifestly contributed to the damage, the defendant's liability should be *pro tanto* reduced.

Of course, in its wisdom the court may, by judicious interpretation, lop the tentacles of the Act, and confine its effect to what was undoubtedly the intention of the Legislature. Until the points raised have been tested by action, it would, perhaps, be unwise to venture an opinion as to the validity of the arguments submitted.

In endeavouring to estimate the virtues of the Act, the most obvious point is that it will relieve many cases where undue hardship has in the past been caused to a plaintiff. The reform effected by the Act was long overdue. On the other hand, sight must not be lost of the fact that a plaintiff, who has been very negligent but has suffered extensive damage, can now recover from a defendant, who is only slightly to blame, a contribution that may greatly exceed the actual loss suffered by the defendant. Before the Act, the defendant would, rightly, have been given the verdict. A pedestrian negligently steps into the road and causes a car which is being driven at a reckless, or even criminally negligent speed to swerve and crash into a tree. Before the Act the driver of the car would not have contemplated bringing an action against the careless pedestrian. Had he done so, he would have been defeated by his own contributory negligence. Now he can succeed in his action and may recover a sufficient sum by way of damages to make the proceeding worth his while. This new hardship to the nearly innocent defendant must clearly be off-set against the relief given to the plaintiff who has been slightly negligent.

The draftsmanship of the Act is not as happy in all its details as might have been wished, and considerable litigation may take place before its precise effects are known. However, there can be no going back upon it. In this atomic age, the law should be well able to absorb the shock of its impact.

COMPANY LAW AND PRACTICE

THE EFFECT OF REGISTRATION OF CHARGES

SOME little time ago I dealt in this column with the various documents relating to charges on the property of a company which are required to be delivered to the Registrar of Companies, and I pointed out that the object of the various provisions requiring delivery is to enable the Registrar to keep his register of charges in such a condition that interested persons can discover the actual state of any burdens that have been imposed on the company's property. This result is, of course, achieved, but it is not yet quite clear whether the registration of a charge on the company's property constitutes notice to all the world of the existence of the charge.

It is, of course, well known that any person having dealings with a company is deemed to have notice of the contents of its memorandum and articles, which, of course, are also registered with the Registrar. The chief authority for that proposition is to be found in that old friend *The Royal British Bank* v. *Turquand* (1856), 6 El. & Bl. 327, and the reason for the rule is explained by Lord Hatherley in *Mahony* v. *East Holyford Mining Co.* (1875), L.R. 7 H.L. 869, at p. 893, where he says: "On the one hand it is settled by a series of decisions, of which *Ernest* v. *Nicholls* (1857), 6 H.L. Cas. 401, is one, and *Royal British Bank* v. *Turquand* a later one, that those who deal with joint stock companies are bound to take notice of that which I may call the external position of the company. Every joint stock company has its memorandum and articles of association . . . Those articles of association . . . are open to all who are minded to have any dealings whatsoever with the company, and those who so deal with them must be affected with notice of all that is contained in those . . . documents."

At an earlier date, as Sir W. Page Wood, V.-C., in *Fountaine* v. *Carmarthen Railway Co.* (1868), L.R. 5 Eq. 316, he puts it in this way: "In the case of joint stock companies the deed is, I may say, expressly made a part of the general Act; because there is an express provision in the Act that all proceedings are to be taken pursuant to the deed which forms the charter of the company, so that the deed is, in truth, incorporated in the Act."

Neither of these propositions is very happily worded, though it is possible, I think, to follow what the author intended to express. In the later case he seems merely to say that because the Act has required the memorandum and the articles to be available to the public, which it did and does, it must follow that the public are to be deemed to have notice of the contents of this document. This seems to be something of a *non sequitur*, and the missing link can only be supplied by some such proposition as that there would have been no point in the provision for publicity unless that result had followed.

In the earlier case, on the other hand, he seems to take the view that the memorandum and articles, because prescribed for by the Act, when they are registered, become in some mysterious way incorporated in the Act, so that everyone must be taken to know the contents of the memorandum and articles in the same way that they must be taken to know the contents of the Act. A possible explanation of this earlier view is that his recollection at the time of this case (1868) would no doubt extend to the period anterior to the year 1844, before which incorporation, if not obtained by means of a Royal Charter, could only be obtained by means of a special Act of Parliament. Such a special Act of Parliament would be known to all the world in theory, and he may well have considered that when the subsequent legislation was passed making incorporation simpler, it did not have the effect of making the document or documents containing the constitution of the company any less public than had previously been the case. The lapse of

six years and elevation to the House of Lords may have caused him to modify this view.

Whatever the reasons for these various decisions, the proposition that every person dealing with a company must be taken to have notice of everything contained in its memorandum and articles has not been for a long time in any doubt. The foregoing rather speculative discussion has, however, a certain relevance on the question of what the effect is of registering debentures. If what I may call the Hatherley view is the correct one, it will follow that because they are required by the Act to be registered, notice of the particulars contained in the Registrar's register of charges will be imputed to any person having any dealings with the company. If, however, what I may call the Page Wood view is the correct one, such a result will not necessarily follow, and for it to do so some provision other than the one merely requiring registration would need to be found.

Turning now to the cases which throw some light on this point, it seems fairly clear that even if parties dealing with a company have notice that there is a charge on the property of the company by reason of that charge being registered, that registration does not give them notice of the contents of the document which imposes the charge. This follows from the decision in *Re Valletort Sanitary Steam Laundry Co.* [1903] 2 Ch. 654. In that case a company had issued a debenture containing a floating charge on its assets and containing also a provision precluding the creation by the company of any charge ranking in priority to the debenture. The company, forgetting this provision, created an equitable mortgage by deposit of its title deeds, and the equitable mortgagee was held to be entitled to priority over the debenture-holders in spite of the fact that the equitable mortgagee had actual notice of the existence of the debenture, though not of its provisions.

In that case, therefore, the question whether the registration of the particulars of the debenture constituted constructive notice to the mortgagee that the debenture existed did not arise, as he, in fact, had actual notice of the debenture's existence, but even in that case such actual notice did not fix him with constructive notice of the contents of the debenture. It must clearly follow from this that constructive notice of the existence of a debenture would equally not amount to constructive notice of its provisions.

I have only been able to find two cases which discuss the question of the effect of registering particulars of debentures, one a decision of Kekewich, J., *Re Standard Rotary Machine Co., Ltd.* (1906), 95 L.T. 829, and one a decision of Eve, J., *Wilson* v. *Kelland* [1910] 2 Ch. 306.

The former of these cases was one in which the question of priorities again arose between the holders of a debenture, containing a floating charge on the assets of the company and also a provision that the company was not to create any charge ranking in priority to that floating charge, and a bank which, subsequent to the issue of the debentures, had been given a charge on certain property of the company to secure an overdraft. In this case it was not contended that the bank had actual notice of the debentures, and in dealing with the argument that it had constructive notice, Kekewich, J., says: "I will take it that the bank had notice that there were debentures—I will not go into the question whether they had notice or not. The debentures had to be registered under the Act of 1900, and it may be that they knew that they had debentures . . . If they had looked at the register they would have found out that there was a charge on the undertaking and all the property of the company . . . and they would have naturally concluded, and properly concluded, those debentures were at any rate in a common form creating a floating charge. They would never have found out in that way that the debentures did include a provision that no further security should be given on the property of the company so as to come in conflict with this."

He then goes on to say that even if the bank had notice of the debentures the case of *Re Valletort Steam Laundry Co., Ltd., supra*, shows that such notice does not extend to notice of the terms of the debentures.

In the other of the two cases referred to above, *Wilson* v. *Kelland*, Eve, J., says on the question now under discussion: "The evidence proves that the . . . mortgagees had no actual notice of the debentures and the trust deed, but had I come to the conclusion that the priority of their mortgage depended on the question whether or not they had any notice, I should have been prepared to hold that the particulars registered in this case pursuant to s. 14 of the Companies Act, 1900, amounted to constructive notice of a charge affecting the property, but not of any special provisions contained in that charge restricting the company from dealing with their property in the usual manner when the subsisting charge is a floating security."

There is thus no express decision on the point, but in the light of the dicta referred to above it seems fairly certain that the registration of the particulars of a charge affects all persons dealing with the company with notice of the existence of that charge. In both judges' views, such notice was equivalent to notice of a charge in the usual form for a charge of that description. It happens that these three cases are all relating to floating charges, but there seems no reason to suppose that the same principles would not apply in the case of other charges.

A CONVEYANCER'S DIARY

CHANCERY PROCEDURE

SINCE I wrote my recent "Diary" on Chancery procedure (*ante*, p. 340), there have been published the Rules of the Supreme Court (No. 3), 1946 (*ante*, p. 348). By Art. 2 of those rules it is provided as follows:—

> "The following rule shall be added to Order LV and shall stand as Rule 14c, namely—
>
> '14c. All applications to the High Court under the Public Trustee Act, 1906 (in addition to the specific applications referred to in Section 10 (2) and Section 13 (7) of the Act) shall be made to a Judge of the Chancery Division by Summons in Chambers. Every such summons shall be entitled in the Matter of the Will, Settlement or other trust, as the case may be, to which the Summons relates, and also in the Matter of the Act, and shall in the body thereof specify the particular section or sections of the Act under which relief is sought'."

This rule puts an end to the requirement and possibility of an originating motion in cases under the Public Trustee Act, 1906, so that *Re Squire* and *Re James*, discussed in my former "Diary," will be the last reported cases of their kind. It does not, of course, alter the general principle that, unless an applicant can point to a rule or section authorising him to proceed by summons, he must bring the matter before the court by way of originating motion. Though the new rule will remove one trap from the path of the unwary draftsman, it is not likely to make proceedings under the Act more expeditious. *Re James* took just about twelve days from first to last. An originating summons would hardly get adjourned into court so soon, and would then have to take its turn.

PERPETUITIES AND ACCUMULATIONS.—II

THE rule against perpetuities does not apply to contracts, but only to the creation of interests in property. There is no reason why a contract should not be perpetual. Indeed, there is the authority of the House of Lords for the proposition that *prima facie* all contracts are perpetual unless the contrary is stated or implied. Thus, in *Llanelly Railway Co.* v. *London and N.W. Railway Co.* (1875), L.R. 7 H.L. 550, at p. 567, Lord Selborne

said " an agreement *de futuro* extending over a tract of time which, on the face of the instrument, is indefinite and unlimited, must (in general) throw upon anyone alleging that it is not perpetual the burden of proving that allegation, either from the nature of the subject or from some rule of law applicable thereto." Of course many contracts could not possibly be perpetual. Contracts to render personal services are one example, and the same would often be true of ordinary commercial contracts.

But there is one curious border-line case between the creation of interests on the one hand and mere contracts on the other, namely, an option to purchase. An option can ripen into a contract for purchase, enforceable in damages, or it may equally be regarded as creating an interest in the property subject to the option. The legal results are different according to which way one happens to be looking at the matter. Thus, an option to purchase Blackacre at any time within twenty-two years would be a valid contract whose breach would be enforceable in damages, but it could not be ordered to be specifically enforced, since specific performance could conceivably result in giving effect to the equitable interest in land at a date more remote than the expiration of twenty-one years. In the case which I have stated, the period of twenty-one years contemplated by the rule against perpetuity is a period in gross, because the option contains no reference to a life or lives during which it must be exercised. It would, of course, be possible to create a valid option to take effect within the life of the longest liver of the descendants of King Edward VII living at the date of its creation and twenty-one years thereafter. But in practice the difficulty arises in cases where no such meticulous care has been taken. Thus, I once saw a contract for a weekly tenancy of a house with an option to buy the house at any time during the tenancy. This option was, I think, void, as regards specific performance, on the ground of perpetuity, because there is nothing necessarily to stop a weekly tenancy going on for ever. The same sort of point arose in *Woodall* v. *Clifton* [1905] 2 Ch. 257, where there had been a lease for ninety-nine years with an option to purchase the freehold at any time during the term.

The consequence of a limitation infringing the perpetuity rule is not merely to make that limitation void but to avoid all subsequent limitations. The rule against accumulations stands on rather a different footing. Unlike the rule against perpetuities it is a statutory rule, and the breach of it merely avoids *pro tanto* the infringing limitation. It does not affect subsequent limitations. The purpose of the rule against perpetuities is presumably to prevent a settlor from tying up his land upon a perpetual series of life interests, so that nobody ever becomes owner of it. The rule against accumulations appears to have been enacted in view of the will of Mr. Thellusson, who lived at the end of the eighteenth century, who directed that the income from his land should be accumulated during the lives of all his sons and grandsons living at his death, and that at the death of the survivor it should be distributed amongst the male representatives of his sons' families. It is said to have been calculated at the time that if this period of accumulation lasted for as long as might be expected, the amount ultimately to be distributed would be in the region of £100,000,000, a sum considerable at any time, but fantastic at that date. In the meantime, for the next seventy or eighty years, no one would have had any benefit whatever from the property. To prevent preposterous dispositions of this kind, there was enacted the Accumulations Act, 1800, which is now represented by s. 164 of the Law of Property Act. According to that section an accumulation cannot be directed for longer than one of the following periods, namely: " (*a*) The life of the grantor or settlor; or (*b*) a term of twenty-one years from the death of the grantor, settlor or testator; or (*c*) the duration of the minority or respective minorities of any person or persons living or *en ventre sa mère* at the death of the grantor, settlor or testator; or (*d*) the duration of the minority or respective minorities only of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated." The effect is that the absolute maximum period of accumulation is thus twenty-one years and nine months, and in most cases it is a simple period of twenty-one years. The rule is quite often infringed in wills right down to this day. In such a case the result is that the direction is void as regards the period following the end of the longest available period of accumulation and the income so freed has, under the section, to " go to and be received by the person or persons who would have been entitled thereto if such accumulation had not been directed." If the fund of which the income is directed to be accumulated is specific, the freed income will fall into residue; if, as is more often the case, the fund in question is residuary, the freed income goes to the statutory next-of-kin. The rule against accumulations, unlike the perpetuity rule, is subject to a number of exceptions, created by the Law of Property Act, 1925, s. 164 (2). There are excepted accumulations for the payment of debts, accumulations for raising portions, and accumulations of the profits of timber or wood. The subsection provides that any of the excepted provisions " may be made as if no statutory restrictions on accumulation of income had been imposed." Therefore, if Mr. Thellusson were alive to-day he would be able to buy a forest and make a will by which it would become useless to anybody until a period regulated only by the perpetuity rule. I have never understood what the reason for this last exception is supposed to have been.

LANDLORD AND TENANT NOTEBOOK

SELF-EMPLOYED LANDLORD?

READERS may have noticed, in our " County Court Letter " in the issue of 13th July, a short report of a case, *Hooper* v. *Cerrone*, in which the learned county court judge made a somewhat provocative observation; provocative, at all events, if it was an essential part of the judgment. The plaintiff owned a small farm and had let a cottage on or near it to the defendant, a lorry-driver; he wanted possession because he had been ordered to grow more roots and was living in rooms 4 miles away. He produced a W.A.E.C. certificate and relied upon para. (*g*) (ii) of Sched. I to the Rent, etc., Act, 1933; and His Honour, dealing with the argument that that paragraph applied only when an employee or prospective employee was to occupy the premises, " observed that a landlord often had to be regarded as his own employee " and granted an order.

Now it is true that the expression " self-employed " is becoming fairly common in official language; it occurs in the National Insurance proposals and in the regulations governing bread rationing where they provide for extra rations for manual workers. And in an income tax case, *Partridge* v. *Mallandaine* (1886), 18 Q.B.D. 276, Denman, J., interpreting " professions, employments or vocations," said: " A man may employ himself so as to earn profits in many ways." So to say out of hand that in the schedule to the 1933 Act " employed " connotes a relationship between two parties is perhaps to put the case too high.

Examining the language of the provision, one is struck by the fact that the W.A.E.C. must have taken the same view, or much the same view as that taken by the judge. Their certificate must say " that the person for whose occupation the dwelling-house is required by the landlord is, or is to be employed on work necessary for the proper working of an agricultural holding or as an estate workman on the maintenance and repair of the buildings, plant or equipment of agricultural holdings comprised in the estate." But the really essential part of such a certificate is, as was pointed out in *Pickford* v. *Mace* [1943] K.B. 623 (C.A.), that part which deals with the necessity of the work.

The arguments in favour of and against interpreting "employed" as meaning "employed by someone else" in this enactment, appear to be as follows. In favour: the words "by the landlord" could have been omitted if two persons, employer and employed, were not contemplated; the reference to "an estate workman" points to the same conclusion; and the paragraph opens with "the dwelling-house is reasonably required by the landlord for occupation as a residence for some person engaged in *his* whole-time employment or in the whole-time employment of some tenant from him . . ." Against: one can be employed on work on one's own account; sub-para. (ii) was clearly designed to go further than (i), in which previous occupation by an employee is a condition precedent to the provision operating at all; and this harmonises with the consideration that specially wide exemption from restriction is to be granted where the production of food is concerned—whether the man who produces it is self-employed, employed as an independent contractor, or employed under a contract of service, would not matter (cf. *Kemp* v. *Ballachulish Estate Co., Ltd.* [1933] S.C. 478, deciding that the "agricultural holding" need not be the subject of a tenancy).

My own view would be that at least one of the arguments in favour of interpreting "employed" in sub-para. (ii) as "employed by someone else" must prevail against all arguments to the contrary. I refer to the argument that the sub-paragraph is merely part of a provision which, being one of a series of provisions conferring jurisdiction, begins: "the dwelling-house is reasonably required by the landlord for occupation as a residence for some person *engaged in his whole-time employment* or in the whole-time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, *and* either . . ." This part of the provision, as was held in *Pickford* v. *Mace, supra*, calls for ordinary evidence, and cannot be satisfied by the production of a W.A.E.C. certificate. And while official parlance may invest the word "self-employed" with sensible meaning, and in common parlance one may speak of "promising oneself" something or other, it would, I submit, be overstraining language to say that a landlord can be engaged in his own whole-time employment or enter into a conditional contract with himself for such employment.

As the plaintiff in *Hooper* v. *Cerrone* had not become the defendant's landlord by purchasing the cottage, one may wonder why he did not seek possession under para. (*h*) of the schedule in the ordinary way, instead of troubling the W.A.E.C. The answer is, presumably, that he was anxious to avoid any discussion on relative hardship; para. (*g*) says nothing about hardship, though the court has, as in all cases, to be satisfied that it is reasonable to make the order. This, it is true, makes every circumstance affecting the interest of either party in the premises a relevant consideration (*Williamson* v. *Pallant* [1924] 2 K.B. 173); but the proviso to para. (*h*), in dealing with "greater hardship," expressly directs the court to take into account the availability of other accommodation for the landlord or the tenant, introducing an additional difficulty. As against this, the fact that the plaintiff had been ordered to grow roots would be bound to weigh with the court in considering hardship. Also, if the reasoning adopted in the "Notebook" for 6th April last (90 SOL. J. 159) should be sound, the hardship occasioned to other persons by the failure to grow the roots would have been pertinent. It is, consequently, rather strange that the plaintiff did not at least make an alternative claim based on the provision of para. (*h*).

VACANT POSSESSION

A paragraph in "Current Topics" in the same issue as that in which *Hooper* v. *Cerrone* was mentioned, dealt with the position of bailees of stored chattels the owners of which have disappeared. The occasion was two articles in the *Estates Gazette* suggesting sale at the best price as a remedy for the consequent embarrassment; as the writer of our "Topics" observed, the bailee may thereby expose himself to an action for conversion. He might also find himself liable for damages for breach of implied warranty of title if the owner were to recover the goods from the purchaser.

Both landlords and tenants may be under a duty not to cause embarrassment by leaving articles on the demised premises—the former at the commencement of the term, the latter on its termination; for, as was recently emphasised by *Cumberland Consolidated Holdings, Ltd.* v. *Ireland* [1946] K.B. 264 (C.A.) (a vendor-and-purchaser case) "vacant possession" is not limited to considerations of title and adverse claims.

It is curious that the law of landlord and tenant has produced few examples of the scope and nature of the duty in so far as it extends to goods; another recent case, *Rosenthal* v. *Alderton & Sons, Ltd.* [1946] 1 K.B. 374 (C.A.), did concern articles left on demised premises surrendered to the landlords, but this had been specially agreed to, and the point was the measure of damages in detinue (the landlords having sold part of the goods). As far as my research has taken me, it seems that there is no reported decision in which a tenant has complained of a landlord's omission to remove chattels before commencement of term; while in the case of delivery up by tenants, the most recent instance appears to be *Savage* v. *Dent* (1736), 2 Stra. 1064, the exact circumstances of which are unlikely to be repeated in the near future: the tenant left some beer in the cellar.

TO-DAY AND YESTERDAY

July 29.—Alexis de Tocqueville was born at Verneuil on 29th July, 1805. He became an assistant magistrate at Versailles in 1827, and soon afterwards was sent on a mission by the French Government to examine the prisons of America. After making his report he wrote "De la Démocratie en Amérique," which laid the foundation of an increasing European fame. He put orthodox Liberal ideas into an orderly and attractive form, and was himself neither a worshipper nor an enemy of democracy. He resigned early from his magistracy, devoting himself to literature and politics till, after the coup d'état of Louis Napoleon in 1851, he abandoned public life. His other great work was "De l'Ancien Régime." He died in 1859.

July 30.—An action for breach of promise of marriage between Miss Caroline Williams, a lady of thirty-eight, and the Rev. Francis Thomas, son of the Vicar of St. Mary's, Haverfordwest and a Fellow of Pembroke College, Oxford, reached the stage of assessment of damages on 30th July, 1843, at the Haverfordwest Assizes. The parties were of good social standing in the county and their attachment, which was of nine or ten years' standing, had gone beyond affection, but that, said the defendant, was "when he was unregenerate and in an unconverted state." The lady had brought her action when she heard that her swain was about to go to Australia as a missionary and had "made proposals to another lady," leaving her "to pine away in melancholy." The damages were assessed at £500.

July 31.—A rich retired tallow-chandler named Bird lived at Greenwich with his forty-four year old housekeeper, Mary Simmons. They attended church very regularly, and on Sunday, in February, 1818, when they were missed from their places, the beadle afterwards went to look for them. At home there was no answer, so an entry was forced, and they were both found murdered; the house had been plundered. On 31st July, Charles Hussey, a sailor in the East India Company's service, was tried at Maidstone Assizes for the crime. He was convicted and hanged.

August 1.—On 1st August, 1808, the future Lord Campbell wrote: "The Home Circuit begins to-day at Hertford. I do not go there as there is no business to be *seen*, although, were my object in going circuit to *get* business I should have little more chance of success in any of the other counties which we visit. However, I have at present no particular reason to complain. I had a few briefs in London, one with seven guineas marked on the back of it. In addition to which the most flattering thing happened to me about half an hour ago I have yet met with in my professional career. An attorney I never heard of . . . brought me to settle a replication to a plea drawn by Serjeant Williams

to a writ of right, and requested my opinion whether the cause could legally be tried by a common jury as Williams wished it, or whether there must be the Grand Assize of knights girt with swords, the *mize* being joined upon the *merum jus*. It will be a hard-earned guinea, but it may draw a few more after it."

August 2.—On 2nd August, 1886, Edward Clark was offered the Solicitor-Generalship by Lord Salisbury, Sir Richard Webster being Attorney-General.

August 3.—The Chelmsford Assizes ended on 3rd August, 1734, and George Hale and Thomas Humphreys were condemned to death, the one for robbing a gentleman in Epping Forest and the other for horse stealing.

August 4.—During the riots following the rejection of the Reform Bill in the House of Lords, the mob attacked the house of Mr. Mundy, M.P. for the County of Derby, at Marketon, breaking windows and doors. He prepared to defend the place with his son, his nephew and nine servants, who were later reinforced by several men from the village armed with pitch-forks. On their arrival the rioters retreated. Mr. Mundy brought an action against the Hundred of Morleston to recover compensation, and on 4th August, 1831, he obtained a verdict at the Derby Assizes.

DIMINISHED RESPONSIBILITY

The Lord Justice Clerk recently told the Royal Medico-Psychological Association, gathered at Edinburgh, that too many charges of murder were reduced by exaggerated and unproved claims that there only attached to the prisoner a " diminished responsibility " for his acts, so that a section of the population were free to commit crimes with limited liability because a new science claimed to be able to put them in a certain category. The tug-o'-war between those medical men who would convert all, or nearly all, criminals into patients and the lawyers, who still pay them the perilous compliment of treating them as free men with free will and therefore responsibility for their actions, has been going on for a very long time, but the crucial test, however wrapped up in scientific terminology, is still surely the one expressed by Mr. Baron Bramwell in the question : " Could he help it ? " The extreme to which medical men sometimes go was illustrated once at the Newcastle Assizes in the course of a murder trial before Mr. Justice Darling. A doctor gave evidence for the defence and the last question asked him in re-examination was a general one as to whether the accused was insane, to which he answered " Yes." But just as he was leaving the box the judge called him back, asking : " Will you please tell the court, doctor, what it was you said when you turned to go away ? " The doctor, in some confusion, denied that he had said anything. " Oh, yes, I think you did," said Darling. " Please repeat it to the court." Again there was no response. " Very well, I must question you," continued the judge. " After you had said ' Yes ' in answer to counsel's question as to whether the prisoner was insane, did you add, as you turned to go from the box, ' as all murderers are ' ? " He had to admit that this was so, and it much diminished the weight of his evidence.

BARRISTER AND SPEAKER

One of the treasures from Moccas Court, the Hereford home of Sir Geoffrey Cornewall, the contents of which were recently sold by auction, was Gainsborough's full-length portrait of his kinsman, Charles Wolfram Cornewall (whose name is more often spelt without the " e "), robed as Speaker of the House of Commons, an office which he held from 1780 till his death on 2nd January, 1789. Although a Bencher of Gray's Inn, he devoted himself to politics rather than to the law. During a long parliamentary career he paid great attention to the rules and proceedings of the House of Commons, acquiring a knowledge of the laws and usages of Parliament which eminently fitted him for the office of Speaker when his fellow-barrister, Sir Fletcher Norton, was displaced from it. Besides, he " possessed every physical quality requisite to ornament the place : a sonorous voice, a manly as well as imposing figure, and a commanding deportment." He behaved with dignity and rectitude. But he was not superhuman, and in the " Rolliad " he is pictured recruiting his strength in a wearisome debate with the help of the caterer.

" There Cornwall sits, and ah ! compelled by Fate,
Must sit for ever through the long debate ;
Save when, compelled by Nature's sovereign will,
Sometimes to empty and sometimes to fill,
Like sad Prometheus fastened to the rock
In vain he looks for pity to the clock ;
In vain the powers of strengthening porter tries
And nods to Bellamy for fresh supplies."

He died after a short and sudden illness.

COUNTY COURT LETTER

Tenancy for Duration of War

IN *Morley* v. *Holden*, at Saffron Walden County Court, the claim was for possession of a furnished cottage. The plaintiff's case was that in March, 1944, he gave possession to the defendant rent free, and with board, on condition that she looked after his parents, who were both invalids, and that if they died before the end of the war she could remain rent free until the end of the war with Germany. The plaintiff's father died in October, 1944, and his mother in January, 1945. In May, 1945, the defendant was asked to give up the cottage and she was also given notice to quit. The defendant's case was that it was agreed that she was to have the cottage, rent and rates free, until her husband returned from the war. There was no arrangement depending on the end of the war with Germany. His Honour Judge Lawson Campbell held that the tenancy was to continue until the date of the husband's demobilisation. No order was therefore made.

Alleged Obstruction of Ditch

IN *Spencer* v. *Blakeway*, at Shipston-on-Stour County Court, the claim was for 15s. as damages for trespass and for an injunction to restrain a further trespass. The plaintiff was a farmer, and her case was that the defendant was a tenant of an adjoining field, and he had placed a piece of timber across a ditch, thereby preventing the water from flowing to a drinking place for cattle on the plaintiff's farm. The obstruction was 8 feet long, and was banked up with soil and stones. It was not there prior to the defendant's becoming tenant of the field, and was discovered in October, 1945. On its removal, the natural flow of water was resumed. The defendant's case was that his tenancy began in 1938. In 1943 the ditch was cleaned out by the War Agricultural Committee. The evidence of the Land Drainage supervisor was that the piece of timber had apparently been there for a considerable time. It did not obstruct the flow of water, or he would have had it removed. His Honour Judge Forbes held that the timber was in position when the defendant took the field. He was not liable, and judgment was given in his favour, with costs.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Variation of Order for Maintenance

Q. H deserted his wife W a year ago, and an order was obtained on W's application against H in a magistrate's court for the payment of £2 per week maintenance. There are no children. The order did not contain a non-cohabitation clause. H, wishing to become reconciled to W, made her a *bona fide* offer to return, which W has not accepted. In these circumstances :

(*a*) Can H apply to the court for a variation or discharge of their order ?

(*b*) If so, what is the procedure, and what evidence would be required to support H's application ?

(*c*) If not, what other course of action (if any) is available ?

A. (*a*) H can apply for a discharge of the order.

(*b*) The procedure is by summons, supported by such evidence as is available as to the *bona fides* of the offer, e.g., cessation of the association (if any) with another woman, and the provision of accommodation for W.

Agricultural Holding

Q. A, who is a tenant of agricultural land, has received notice to quit. The land is sub-let, and we should like your opinion as to whether or not the sub-tenant can claim compensation for disturbance. If the sub-tenant can claim, from whom is compensation recoverable ? It appears from s. 25 of the Agricultural Holdings Act, 1923, that a tenant can give a sub-tenant *less* than one year's notice to quit. Does this section only permit contracting out of the general rule laid down by s. 25 dealing with notices to quit for agricultural holdings, or does it mean that s. 25 does not apply to contracts of sub-tenancy ?

A. The sub-tenant can claim compensation from A. A sub-tenant is not entitled to one year's notice to quit. Section 25 does not apply to contracts of sub-tenancy. No other contracting out is permitted.

REVIEW

The Law relating to Local Elections. By OSCAR F. DOWSON and H. W. WIGHTWICK, of the Inner Temple, Barristers-at-Law. 1945. London: Charles Knight & Co., Ltd. 25s. net.

Recent events in the electioneering world with a party triumphant in the parliamentary sphere desirous of securing equally effective control of local governing bodies, and thus of linking up central with local administrative policy and authority, have tended to arouse considerably increased interest in the activities of local government: and it may well be that the volume before us will supply a need felt for a comprehensive exposition of election law. As the authors point out in their preface, the subject with which the book is concerned is the law and practice relating to the election of councillors as members of local authorities. It is in fact a complete exposition of the provisions of the Local Government Act, 1933, and the London Government Act, 1939, which govern the conduct of elections in counties and boroughs, and the corresponding provisions of the rules made under the 1933 Act for regulating elections in urban and rural districts. Beginning with a survey of the "lay-out" and characteristics of our local electoral systems and of the resumption of elections at the end of 1945, we are taken through the whole process of organisation. The candidate and his position and duties, his expenses and his meetings; the agent and his responsibilities before and after the day of election; the poll, its requirements and its declaration. Then we have a complete review of the law touching illegal and corrupt practices. The remainder of the volume sets out all relevant statutes and statutory rules and orders. There is an excellent index and a table of cases which add very much to the completeness of a carefully prepared and serviceable volume.

BOOKS RECEIVED

The Law of Income Tax. By His Hon. E. M. KONSTAM, K.C. Tenth Edition. 1946. pp. lxviii and (with Index) 851. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. £3 10s. net.

The Law of Trade Unions. By H. SAMUELS, M.A., of the Middle Temple, Barrister-at-law. Second Edition. 1946. pp. xv and (with Index) 96. London: Stevens & Sons, Ltd. 6s. net.

Pollock's Principles of Contract. By P. H. WINFIELD, K.C. Twelfth Edition. 1946. pp. xl and (with Index) 602. London: Stevens & Sons, Ltd. £2.

Questions and Answers on Police Duties. Third Series. By CECIL C. H. MORIARTY, C.B.E., LL.D. 1946. pp. vi and (with Index) 86. London: Butterworth & Co. (Publishers), Ltd. 6s. 6d. net.

Remembrancer of Local Land Charges. By A. H. EDWARDS, Solicitor and Clerk to the Herne Bay U.D.C. Second Edition. 1946. pp. iii and 29. Obtainable from Mr. A. S. Mays, Hon. Secretary, Society of Clerks of Urban District Councils of England and Wales, Old Court House, Wood Street, Barnet, Herts. 6s. 6d., post free.

The Law relating to the Alteration of Local Government Areas. By F. A. AMIES, of Gray's Inn, Barrister-at-law. 1946. pp. xix and (with Index) 149. London: Hadden, Best & Co., Ltd. 15s. net.

County Court Manual. An introductory textbook for use in County Courts and District Registries of the High Court. Published for the County Courts Branch of the Lord Chancellor's Department. By R. C. L. GREGORY, LL.B. (Hons.). 1946. pp. 128 (with Index). London: H.M. Stationery Office. 2s. net.

Rent Restrictions Guide. By LIONEL A. BLUNDELL, LL.M., of Gray's Inn, Barrister-at-law. Second Edition. 1946. pp. xxiii and (with Index) 166. London: Sweet & Maxwell, Ltd.; The Estates Gazette, Ltd. 12s. 6d. net.

Lewin on Trusts. Fourth Cumulative Supplement (to June, 1946). By JOHN BURKE, of Lincoln's Inn, Barrister-at-law. Fourteenth Edition. 1946. pp. vi and (with Index) 30. London: Sweet & Maxwell, Ltd. 4s. net.

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Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-law. 1945–46 Volume, Part 6. London: Hamish Hamilton (Law Books), Ltd.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XXVIII, Parts I and II. London: Society of Comparative Legislation.

NOTES OF CASES

COURT OF APPEAL

Liddiatt *v.* Great Western Railway Company

Scott, Tucker and Cohen, L.JJ. 9th April, 1946

Railways — Negligence — Accommodation crossing — Duties of railway company.

Appeal from a decision of Judge Wethered, sitting at Thornbury County Court.

The plaintiff's cows were being driven over an accommodation crossing across the defendant company's railway line, when one of them was struck and killed by a train. The accommodation crossing was to the east of and partially visible from a level crossing. The level-crossing keeper, a servant of the defendants, having been informed that a train was approaching from the west, closed her crossing to road traffic and pulled the distant signal, situated some 700 yards to the west, to the all-clear position. The crossing keeper had not been instructed to see that the accommodation crossing was clear before signalling trains across the level crossing. The plaintiff having sued the company for negligence, the county court judge held that the level-crossing keeper failed in her duty, which was not to give the train the all-clear signal unless there was no indication that the accommodation crossing was or was about to be in use. The railway company appealed. (*Cur. adv. vult.*)

TUCKER, L.J., reading the judgment of the court, referred to *Cliff* v. *Midland Railway Co.* (1870), L.R. 5 Q.B. 258, and said that the defendants were under no duty to place a watchman at the accommodation crossing. There was no evidence that that crossing was so placed as to impose on the company the duty to take greater precautions at that place than was usual in the normal working of a railway. There seemed to be no reason why those using the accommodation crossing in question should be entitled to expect any greater consideration than the users of any of the other thousands of accommodation crossings on railway lines throughout the country, except that it happened to be within sight of a level crossing at which the company were under a statutory duty to keep a keeper. The duty ascribed to the company by the county court judge was tantamount to imposing on the company a duty to instruct all their level-crossing keepers, or any signalman whose signal box was within sight of a level crossing, not to signal to a train to proceed until he had ascertained that the accommodation crossing was not being, or about to be, used. A railway company was under no such duty, which would constitute a considerable extension of that laid down in *Cliff* v. *Midland Railway Co., supra*. The appeal must be allowed.

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[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

Hirsch and Others *v.* Somervell and Others

Roxburgh, J. 30th April, 1946

Alien enemy—Action in respect of arrest and proposed deportation—Defendants officers of Crown—Right of Crown to deport an alien enemy—No cause of action—Application to strike out statement of claim.

Procedure summons.

The plaintiffs were originally Austrian nationals and became German nationals in 1938 as the result of the annexation of Austria. In 1941 they were arrested in Trinidad and brought to this country. They applied for a writ of habeas corpus in 1944 on the ground that they had been deprived of their German nationality by a German decree and were stateless. These proceedings were decided against them, on the ground that the courts would not recognise an enemy decree changing nationality and their nationality remained German (*R.* v. *Home Secretary, ex parte L.* [1945] K.B. 7). In this second action the plaintiffs claimed relief against the defendants, who were servants of the Crown at the material dates, in respect of their arrest, detention and threatened deportation. By this summons the defendants applied to have the statement of claim struck out and the action dismissed.

ROXBURGH, J., said that the jurisdiction to strike out a statement of claim must be most sparingly exercised (*Dyson* v. *Attorney-General* [1911] 1 K.B. 410, 419, *per* Fletcher Moulton, L.J.). The question was whether in this case the "cause of action was obviously and almost incontestably bad." The war with Germany was still continuing, at least up to 2nd April, 1946 (*R.* v. *Bottrill, ex parte Kuechenmeister, ante*, p. 321). The early

decision held that the plaintiffs were German nationals at its date. They had not since ceased to be so. On the footing that they were German nationals, it was determined by a long line of authorities that they could not, while a state of war continued, challenge the legality of their arrest, detention or threatened deportation. He was bound to say that their form of action was "obviously and almost incontestably bad" (*Netz* v. *Ede, ante*, p. 187; *R.* v. *Bottrill, supra*). It had been submitted to him that, although the Crown might lawfully imprison a German national while a state of war existed between this country and Germany, the servants of the Crown might nevertheless be liable in civil courts for carrying out the orders of the Crown. Of that argument he felt bound to say that it was "obviously and incontestably bad." He must strike out the statement of claim.

COUNSEL: *H. O. Danckwerts; Harold Brown.*

SOLICITORS: *Treasury Solicitor; Waller, Neale & Houlston*, for *Marsh & Ferriman*, Worthing.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Attorney-General and Newton Abbot Rural District Council *v.* Dyer

Evershed, J. 6th June, 1946

Highway—Lane made after 1832—*Used as footway for forty years prior to* 1924—*No owner with power to dedicate except by exercise of power of appointment—Right disputed in* 1923—*Defendant then agrees way exists—Way again stopped in* 1937—*Whether right of way established—Rights of Way Act*, 1932 (23 & 24 *Geo.* 5, *c.* 45), *s.* 1 (2) (*b*).

Witness action.

In this action the Attorney-General on the relation of the N rural district council and the council on its own behalf sought a declaration that a public right of way on foot existed over a lane running from the Teignmouth-Newton Abbot Road to the foreshore. The lane was made after 1832 and before 1843. From 1832 until 1920, when the adjoining land and the soil of the lane was sold, the land was in strict settlement. But from 1877 until the sale in 1920 there existed a general power of appointment over the settled land which in fact was not exercised. In 1921 the adjoining farm, together with the soil of the southern end of the lane, and a right of way over the northern end, was conveyed to the defendant. In 1924 the defendant locked a gate across the way and the plaintiff council threatened to take legal proceedings to enforce a right of footway. On the 30th November, 1925, at a meeting between the defendant and his solicitor on the one side and the council's representatives on the other, the defendant agreed that a right of footway over the lane existed and this was confirmed by his solicitor by letter. From 1925 until 1937 the defendant kept the gate in question unlocked. In 1937 he again locked the gate and the plaintiffs started these proceedings.

EVERSHED, J., said that on this state of facts the question arose whether the Attorney-General or the plaintiff council were entitled to obtain the substance of the relief claimed upon the simple ground of contract. Contract was not specifically pleaded. On the other hand, all the material facts were. It would not be right to exclude the council from relief upon the basis of contract. The agreement of the 30th November, 1925, was for valuable consideration. The abandonment by the council of their intention to litigate their claim was good consideration for the defendant's concession of the right of way. This conclusion was sufficient to establish the council's right to relief. It was, however, necessary for him to express his view upon the main issue in dispute, whether, apart from the 1925 agreement, a public right of way on foot had been shown to exist over the lane. The termini of the way were at the northern end a highway, and at the southern end the foreshore. It was not requisite for a public right of way to lead from one public highway to another. There might be a public right of way to a beauty spot. The high-water mark of the sea was a good terminus for a public right of footway (*Williams-Ellis* v. *Cobb* [1935] 1 K.B. 310, 320). On the evidence, he found that the lane was enjoyed as a public footway, as of right and without interruption, for a period of forty years prior to the right being questioned by the defendant in 1923. The defendant contended that it was not open to the plaintiffs on their pleadings to invoke s. 1 (2) of the Rights of Way Act, 1932. The plaintiffs were not bound to plead the Act. The second contention was that the period of forty years in s. 1 (2), though it might start before the 1st January, 1934, when the Act came into operation, must end after that date. In his judgment, by virtue of s. 1 (6) one or both of the termini specified in subss. (1) and (2) might be before or after the commencement of the Act. If this conclusion was right, the plaintiffs need not rely upon their alternative claim at common law. The question was whether he could infer dedication after 1877 and before 1921, bearing in mind the existence of general powers of appointment over the settled property. It was contended that a distinction could be drawn between this case and cases where the land was strictly settled without any overriding power of appointment and the tenant for life and tenant in tail might jointly disentail for the purpose of dedication (*Farquhar* v. *Newbury Rural District Council* [1909] 1 Ch. 12). He was not satisfied on the facts that there would be any warrant to justify the presumption of a lost deed. On this point his conclusion would be adverse to the plaintiffs. Judgment for the plaintiffs.

COUNSEL: *C. E. Harman*, K.C., and *Geoffrey Cross; Raymond Jennings*, K.C., and *Hubert A. Rose.*

SOLICITORS: *Smith & Hudson; Pyke, Franklin & Gould.*

[Reported by Miss B. A BICKNELL, Barrister-at-Law.]

***In re* Arno; Healey *v.* Arno**

Roxburgh, J. 6th June, 1946

Will—Construction—Annuities directed to be paid without deduction of income tax up to 5*s. in the £—Whether annuitants entitled to retain reliefs.*

Adjourned summons.

The testator, by his will, dated the 31st March, 1937, gave a number of annuities which he directed should "be paid without deduction of income tax up to a maximum of 5s. in the pound." The testator died in May, 1937. This summons was taken out to have the effect of the direction determined.

ROXBURGH, J., said it was conceded that so long as the standard rate of income tax did not fall below 5s. in the £ the amount of the annuity payable to each annuitant should be ascertained by calculating, first, the sum which after deduction therefrom income tax at the rate of 5s. would leave the net amount of the annuity bequeathed; and secondly, by deducting from the gross amount so arrived at income tax at the standard rate in force. These calculations involved the following consequences: (1) The gross sum would be a constant figure; (2) the amount actually paid would always be less than the stated amount, so long as the standard rate of tax exceeded 5s.; (3) the amount ultimately available in the hands of the annuitant would always fall short of the stated amount so long as his "effective rate" of tax exceeded 5s. in the £. The case of an annuity altogether free of tax was comparatively simple. In the first instance, payment would be to the annuitant of neither more nor less than the stated amount. Accordingly, if the annuitants' effective rate of tax were below the standard rate, the repayments or allowances to which he was entitled would enable him to receive a sum in excess of the stated amount. This anomaly was the basis of the rule in *In re Pettit* [1922] 2 Ch. 765 (see *Inland Revenue Commissioners* v. *Cook* [1946] A.C. 1). Different considerations arose in the case of annuities which were partly free of income tax. Firstly, the testator when he stated the amount of the annuity could not know what the annuitant would actually receive, because that would depend on the annuitant's effective rate of income tax. Therefore, in stating the amount, the testator was more likely to have an eye on what was to be paid by his trustees than on the sum to remain in the hands of the annuitant. Secondly, the annuitant would never receive the stated amount of the annuity in full, unless and until his effective rate of tax fell to the figure at which the upper limit of freedom from income tax was fixed. Accordingly, the anomaly against which the decision *In re Pettit, supra*, was directed was unlikely to happen. Thirdly, the gross sum involved in the calculation had to be ascertained in a different manner. It was not possible in the case of an annuity partly free of income tax to calculate the gross sum solely by reference to the standard rate and the stated amount. These differences justified a different approach to the problem. The language of the will before him was different from that considered by Romer, J., in *In re Bates*, [1946] Ch. 83; 89 SOL. J. 531). He was not concerned with a gift of annuities "clear of tax," but with a direction for payment "without deduction of tax." If the trustees were entitled to recover any part of the reliefs, the testator's estate would not, in the result, have relieved the annuitant of income tax to the full extent of 5s. in the £. The form of the direction had postulated freedom from tax up to 5s. as a constant factor for the purpose of ascertaining the amount of the annual payment and made the decision in *In re Pettit, supra*, inapplicable. He would declare that the annuitants were entitled to retain the benefit of any reliefs and allowances.

COUNSEL: *W. G. H. Cook* (with *Duthie*); *Neville Gray*, K.C., and *Wilfrid Hunt*; *T. A. C. Burgess*; *Cyril King*, K.C., and *L. M. Jopling.*

SOLICITORS: *Eagleton & Sons*; *Field, Roscoe & Co.*, for *Hillman, Burt & Warren*, Eastbourne.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

R. *v.* Recorder of Leicester

Lord Goddard, C.J., Croom-Johnson and Lynskey, JJ.
3rd April, 1946

Road traffic—Plea of guilty—Appeal to quarter sessions against sentence—Removal of disqualification—Jurisdiction—Duty to state "special reasons" for removal—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 35 (2)—*Summary Jurisdiction (Appeals) Act*, 1933 (23 & 24 *Geo.* 5, *c.* 38), *s.* 1.

Application for an order of certiorari.

Before a court of summary jurisdiction at Leicester, one Kibbler pleaded guilty to contravening s. 35 (1) of the Road Traffic Act, 1930, by permitting another person to use a motor vehicle on a road without there being in force relation to the user of the vehicle by that other person such a policy of insurance or such a security in respect of third-party risks as complied with Pt. II of the Act. He was fined £1, and ordered to be disqualified from holding or obtaining a licence under Pt. I of the Act for twelve months. On his appeal against his sentence, under s. 25 of the Criminal Justice Act, 1925, the Recorder of Leicester removed the disqualification. At the instance of the prosecutor an order of certiorari to quash the order made by the Recorder was sought. By s. 35 (2) of the Act of 1930, a person convicted of an offence against s. 35 (1), "shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified for holding or obtaining a licence under Pt. I of this Act for . . . twelve months from the date of the conviction." By subs. 1 (vii) of the re-enacted s. 31 of the Summary Jurisdiction Act, 1879, contained in s. 1 of the Summary Jurisdiction (Appeals) Act, 1933, "quarter sessions may by their order confirm, reverse or vary the decision of the court of summary jurisdiction, or may remit the matter . . . or may make such other order in the matter as they think just, and by such order exercise any power which the court of summary jurisdiction might have exercised . . ."

LORD GODDARD, C.J., said that under the Act of 1933 quarter sessions might exercise any power which a court of summary jurisdiction might exercise. Section 35 of the Act of 1930 allowed such a court to dispense with the disqualification imposed by the section if special reasons existed. The Recorder had the same power. He had said that he thought that there were special reasons which justified him in removing the suspension, and the court could not say that his order was made without jurisdiction. He had not, however, stated why he had removed the disqualification, although the Act of 1930 provided that the disqualification should operate in the absence of a finding by the court of summary jurisdiction that special reasons existed why it should not do so. He (his lordship) hoped that courts of summary jurisdiction and other courts concerned would take notice that, if they exercised their power of not suspending a licence for special reasons, they should state what the special reasons were. Motoring offences were likely to increase in the future, and it was idle to disregard the fact that cases had been reported in the Press in which magistrates had been asked to refrain from suspending licences for reasons which were not special reasons at all.

COUNSEL: *A. P. Marshall; Van Oss* (for the Recorder).

SOLICITORS: *Wilkinson, Howlett & Moorhouse*, for *W. E. Blake Carn*, Leicester; *E. P. Rugg & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

R. *v.* Holmes

Lord Goddard, C.J., Wrottesley and Croom-Johnson, JJ.
5th April, 1946

Criminal law — Murder — Manslaughter — Provocation — Wife's confession of adultery confirming husband's suspicions.

Appeal from conviction.

The appellant was convicted at Nottingham Assizes of the murder of his wife, and sentenced by Charles, J., to death. He had for some time suspected his wife of infidelity. A quarrel having broken out between them, the wife, after heated argument, admitted having been unfaithful. The husband thereupon seized a hammer-head and struck his wife violently on the head with it. As she lay on the ground, he, according to his own account, then, because he did not like to see her suffering, "put both hands round her neck until she stopped breathing," death thus finally being caused by strangulation. Charles, J., on that evidence, directed the jury that it was not open to them to return a verdict of manslaughter. (*Cur. adv. vult.*)

WROTTESLEY, J., reading the judgment of the court, said that Charles, J.'s direction was clearly right. Generally speaking, killing by a person who intended either to kill or do grievous bodily harm was murder, and the use of a lethal weapon such as a hammer-head, or the employment of such manual means as strangulation, was by itself sufficient evidence of such intention to kill or harm. The law had, however, always recognised that provocation might negative the intention which was a necessary ingredient in murder, reducing the unlawful killing to manslaughter. The test was whether what provoked retaliation was such as would deprive a reasonable man of his self-control and induce him to act as the person charged had acted. A provocation reducing to manslaughter was the sudden discovery by a husband of his wife in the act of adultery: see *Pearson's* case (1835), 2 Lewins Cro. Cas. 216, but Parke, B., there said that ocular inspection of the act was necessary. Nevertheless, in *R.* v. *Rothwell* (1871), 12 Cox C.C. 145, Blackburn, J., went so far as to direct a jury that, exceptionally, words could reduce murder to manslaughter, for example, where a husband suddenly heard from his wife that she had committed adultery, he having no idea of it beforehand. That summing up was not binding on the Court of Criminal Appeal, but in *R.* v. *Palmer* [1913] 2 K.B. 29, the court, while not dissenting from it, had refused to extend the exception to a man who learned from his fiancée that she had had illicit intercourse with someone else. Later, the court refused to extend the exception to a man and woman living together but not married (*R.* v. *Greening* [1913] 3 K.B. 846). In both cases stress was laid on the suddenness of the alleged confession. In *R.* v. *Birchall* (1913), 29 T.L.R. 711, the court said that *R.* v. *Rothwell, supra*, was an extreme case, that there was no case which went further, and that there should be no extension of the doctrine there laid down. The court agreed with that opinion. The present appellant had not been informed of something of which he had had no idea beforehand. He had not killed his wife by one single blow, but by a course of intermittent conduct prosecuted with determination until the wife lay dead. The court thought that it could not be too widely known that a person who, after absence for some reason such as service, either suspected already or discovered on his return that his wife had been unfaithful in his absence, was not on that account, even if she confessed to the adultery, a person who might use lethal weapons on his wife and, if that violence should result in her death, claim provocation reducing his crime to manslaughter. The appeal must be dismissed.

COUNSEL: *Sandlands*, K.C., and *Mrs. Lane*; *Winn*.

SOLICITORS: *Registrar of the Court of Criminal Appeal*; *Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on Friday, 26th July:—

BRITISH NORTH AMERICA.
GAS LIGHT AND COKE COMPANY.
MINISTRY OF HEALTH PROVISIONAL ORDER CONFIRMATION (WALLASEY).
NATIONAL INSURANCE (INDUSTRIAL INJURIES).
PIER AND HARBOUR ORDER (SKEGNESS) CONFIRMATION.
PORTSMOUTH CORPORATION.
RAILWAYS (VALUATION FOR RATING).
ROCHESTER CORPORATION.
SUPERANNUATION.
WEST MIDLANDS JOINT ELECTRICITY AUTHORITY ORDER CONFIRMATION.

HOUSE OF LORDS

Read First Time:—

ISLE OF MAN (CUSTOMS) (NO. 2) BILL [H.C.] [25th July.
SUPREME COURT OF JUDICATURE (CIRCUIT OFFICERS) BILL [H.L.]
To amend the law relating to clerks of Assize and certain other circuit officers. [25th July.

Read Second Time:—

CABLE AND WIRELESS BILL [H.C.] [25th July.
CAMPBELTOWN WATER, ETC., ORDER CONFIRMATION BILL, [H.C.]. [25th July.
FINANCE (NO. 2) BILL [H.C.] [24th July.

Read Third Time:—

CARDIFF CORPORATION BILL [H.C.] [24th July.
CIVIL AVIATION BILL [H.C.] [25th July.
HIGH WYCOMBE CORPORATION BILL [H.C.] [24th July.

LONG EATON URBAN DISTRICT COUNCIL BILL [H.C.] [23rd July.
NATIONAL INSURANCE BILL [H.C.] [24th July.
NEW TOWNS BILL [H.C.] [25th July.
SKEGNESS PIER PROVISIONAL ORDER BILL [H.C.] [25th July.

In Committee :—

DERBY CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.C.] [24th July.
IPSWICH CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.C.] [24th July.
MAIDSTONE CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.C.] [24th July.
READING CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL. [24th July.

HOUSE OF COMMONS

Read First Time :—

ARDROSSAN GAS PROVISIONAL ORDER BILL [H.C.]
To confirm a Provisional Order under the Burgh Police (Scotland) Act, 1892, relating to Ardrossan Gas. [25th July.

Read Third Time :—

CALEDONIAN INSURANCE COMPANY BILL [H.L.] [26th July.
CAMPBELTOWN WATER, ETC., ORDER CONFIRMATION BILL [H.C.] [25th July.
DIPLOMATIC PRIVILEGES (EXTENSION) BILL [H.L.] [25th July.
ISLE OF MAN (CUSTOMS) (NO. 2) BILL [H.C.] [24th July.
NATIONAL HEALTH SERVICE BILL [H.C.] [26th July.
ROYAL LONDON OPHTHALMIC HOSPITAL, ROYAL WESTMINSTER OPHTHALMIC HOSPITAL AND CENTRAL LONDON OPHTHALMIC HOSPITAL (AMALGAMATION, &C.) BILL [H.L.] [26th July.
TYNE TUNNEL BILL [H.L.] [26th July.
WEST SUSSEX COUNTY COUNCIL BILL [H.L.] [26th July.

QUESTIONS TO MINISTERS

COMPANIES, DEEDS, AND ESTATE DUTY OFFICERS

Sir WALDRON SMITHERS asked the Secretary of State for the Colonies whether, in view of the hardship to next-of-kin of men killed on active service who are unable to obtain grants of administration, he will arrange to open the companies and deeds registers and the Estate Duty Office in Singapore immediately.

Mr. CREECH JONES : I am informed by the Governor of Singapore that the Companies (Special Provisions) Ordinance to assimilate the law to the present conditions in Malaya comes into force on 19th July and that the Companies Office is now open. The Deeds Registry is also open for registering transactions which can be exempted from the provisions of the Moratorium Proclamation. The appointment of an Acting Commissioner of Estate Duties will be gazetted at an early date. [17th July.

MAINTENANCE OF DESERTED WIVES IN SCOTLAND

LORD JOHN HOPE asked the Secretary of State for the Home Department whether he will consider amending the present law so that a deserted wife who resides in Scotland may not be prevented from suing for maintenance because her husband resides in England.

Mr. EDE : I agree that amendment of the existing law is desirable, but I regret that, in view of the complexity of the subject, and the many other demands on the Government's legislative programme, I cannot hold out any hope of legislation at the present time. [18th July.

JUVENILE COURTS (FINES)

Mr. WILKES asked the Secretary of State for the Home Department whether he is aware that from time to time juvenile courts impose fines of several pounds, in certain cases, on children and, in view of the fact that heavy fines on children below the age of ten years cause only hardship to the parents and cannot act as a deterrent to the children, if he will issue a circular discouraging the imposition of such heavy fines by children's courts.

Mr. EDE : In the case of a child under fourteen, the amount of the fine must not exceed forty shillings, and it may be imposed on the parent unless the court is satisfied that he has not conduced to the commission of the offence by neglecting to exercise due care of the child. It is for the juvenile courts to decide whether, having regard to all the circumstances, a fine is the best way of dealing with a particular offence, and on the information before me I do not think they need further guidance in the exercise of their discretion. [22nd July.

SUBORDINATE LEGISLATION (TREASURY CIRCULAR)

Sir J. MELLOR asked the Prime Minister whether his attention has been called to para. 10 of Treasury Circular No. 21/46, stating that subordinate legislation, purporting to be made with retrospective effect, is ultra vires unless the parent statute clearly confers power to give such effect ; and whether legislation will be introduced to give validity to the Air Navigation (Amendment) (Ministry of Civil Aviation) Order, 1945 (S.R. & O., 1945, No. 1637), and the Further Education Grant Regulations, 1946 (S.R. & O., 1946, No. 352), which, according to the circular, are ultra vires.

THE CHANCELLOR OF THE EXCHEQUER (Mr. Dalton) : I have been asked to reply. My right hon. friend the Prime Minister has seen the Treasury circular referred to. It is for the guidance of the heads of Departments to whom it is addressed, and it states a general proposition. Regard has to be had to the precise statutory powers in each case, and my right hon. friend does not accept the contention that legislation, as suggested by the hon. member, is necessary. [23rd July.

PROBATE REGISTRY (STAFF)

Mr. REES-WILLIAMS asked the Attorney-General whether, in view of the delays and congestion in the Personal Application Department in the Probate Registry at Somerset House, he will increase the staff.

THE ATTORNEY-GENERAL : The Personal Application Department has now been removed to Ingersoll House, 9, Kingsway, W.C.2, where the premises are more commodious and suitable. Personal applicants are able to be dealt with privately in separate rooms. The staff of the Department has already been increased and will be further increased as and when required. [25th July.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 1163. **Acquisition of Land** (Increase of Supplement) Order. July 22.
No. 1165. Acquisition of Land (Increase of Supplement) (Scotland) Order. July 22.
No. 1140. **Apples.** Order amending the Imported Apples Order, 1945. July 16.
No. 1130. **Cinematograph Film,** General Licence. July 15.
No. 1150. **Control of Building Operations** (No. 7) Order. July 19.
No. 1128. **Cutlery, Spoons and Forks** (Control) Order. July 15.
No. 1118. **Furniture** (Control of Manufacture and Supply) (Amendment) (No. 2) Order. July 15.
No. 1054. **Laundry Wages Council** (Great Britain) Wages Regulation Order (W.54). July 15.
No. 1055. Laundry Wages Council (Great Britain) Wages Regulation (Holidays) Order (W.55). July 15.
No. 1108. **Livestock** (Import from Eire and the Isle of Man) Regulations, amending the Livestock (Import from Eire and the Isle of Man) Regulations, 1945. July 12.
No. 1132. **Meals in Establishments** Order. July 12.
No. 1156. **North of Scotland Hydro-Electric Board** (Borrowing and Stock) Regulations. July 17.
No. 1159. **Pension Appeals** against Final Assessments of Disablement (Reckoning of Time Limit) Order. July 19.
No. 1146. **Regulation of Disposal of Stocks.** General Licence. July 18.
No. 1037. **Sheriff, Scotland.** Union of Sheriffdoms Order. May 15.
No. 1139. **Soap** (Licensing of Manufacturers and Rationing) Order. July 16.
No. 1147. **Town and Country Planning** (General Interim Development) Order (Scotland). July 17.
No. 1148. **Welfare Foods** Order. July 19.

THE SOCIETY OF PUBLIC TEACHERS OF LAW

The thirty-second annual general meeting of the Society of Public Teachers of Law was held at the London School of Economics and Political Science, on Friday and Saturday, the 12th and 13th July, 1946. On Friday, a paper was read by Professor Denis Browne (University of Sheffield) on " Post-War Problems of Law Teachers." A discussion followed. In the evening a dinner was held and the Society entertained as its guests Lord Macmillan, Lord du Parcq, the Master of the Rolls, the Attorney-General, Mr. J. B. Leaver (Chairman of the Legal Education Committee of the Law Society) and Mr. T. G. Lund, Secretary of the Law Society. Private guests included Mr. W. Elliott Batt, C.M.G., Sir Richard Hopkins and Sir Cecil Carr, K.C.

On Saturday, the out-going President, Judge Raleigh Batt, delivered his presidential address on " The Teaching of the Common Law and of its Practice." Professor C. E. Smalley-Baker (University of Birmingham) was elected as President, and Dr. W. T. S. Stallybrass (the Principal of Brasenose College, Oxford) as Vice-President for the ensuing year.

Wills and Bequests

Mr. F. A. Walker, solicitor, of Chesterfield, left £63,350, with net personalty £44,283.

Mr. C. N. Tunnard, solicitor, of Boston, left £23,627, with net personalty £11,839.